

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 908

Introduced by Hilgert, 7; Bourne, 8

Read first time January 5, 2000

Committee: Judiciary

A BILL

1 FOR AN ACT relating to probation administration; to amend sections
2 29-2246, 29-2251, 29-2252, 29-2253, 29-2258, 29-2261,
3 29-2262.03, and 29-2269, Reissue Revised Statutes of
4 Nebraska, and section 29-2259, Revised Statutes
5 Supplement, 1999; to transfer the Office of Probation
6 Administration from the Supreme Court to the Department
7 of Correctional Services; to define terms; to provide
8 powers and duties for the Director of Correctional
9 Services; to eliminate powers of the Supreme Court and
10 other courts as prescribed; to change powers of the
11 probation administrator; to harmonize provisions; to
12 repeal the original sections; and to outright repeal
13 sections 29-2249, 29-2249.04, 29-2250, and 29-2262.05,
14 Reissue Revised Statutes of Nebraska.
15 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Office of Probation Administration is
2 created within the Department of Correctional Services. The office
3 is charged with the administration of probation services in the
4 community. The Office of Probation Administration shall consist of
5 the probation administrator, the Nebraska Probation System, and any
6 employees as may be necessary to carry out the functions of the
7 Nebraska Probation System.

8 Sec. 2. All furniture, equipment, books, files, records,
9 and other property used by the Office of Probation Administration,
10 with the exception of the property provided by the counties
11 pursuant to section 29-2259, shall be transferred and delivered to
12 the Department of Correctional Services on the effective date of
13 this act.

14 Sec. 3. Section 29-2246, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 29-2246. ~~As used in~~ For purposes of the Nebraska
17 Probation Administration Act and sections 43-2,123.01 and 83-1,102
18 to 83-1,104, unless the context otherwise requires:

19 (1) Association ~~shall mean~~ means the Nebraska District
20 Court Judges Association;

21 (2) Court ~~shall mean~~ means a district court, county
22 court, or juvenile court, except a separate juvenile court
23 established pursuant to sections 43-2,111 to 43-2,113 and 43-2,118
24 to 43-2,127;

25 (3) Office ~~shall mean~~ means the Office of Probation
26 Administration;

27 (4) Probation ~~shall mean~~ means a sentence under which a
28 person found guilty of a crime upon verdict or plea or adjudicated

1 delinquent or in need of special supervision is released by a court
2 subject to conditions imposed by the court and subject to
3 supervision;

4 (5) Probationer ~~shall mean~~ means a person sentenced to
5 probation;

6 (6) Probation officer ~~shall mean~~ means any person who
7 supervises probationers, except unpaid volunteers from the
8 community;

9 (7) Juvenile probation officer ~~shall mean~~ means any
10 probation officer who supervises probationers of a separate
11 juvenile court;

12 (8) Chief probation officer ~~shall mean~~ means the
13 probation officer in charge of a probation district;

14 (9) System ~~shall mean~~ means the Nebraska Probation
15 System; ~~and~~

16 (10) Administrator ~~shall mean~~ means the probation
17 administrator;

18 (11) Department means the Department of Correctional
19 Services; and

20 (12) Director means the Director of Correctional
21 Services.

22 Sec. 4. Section 29-2251, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 29-2251. The ~~Supreme Court~~ director shall appoint a
25 probation administrator who shall be a person with appropriate
26 experience in the field of probation or with training in relevant
27 disciplines at a recognized college or university. ~~and who shall~~
28 ~~serve at the pleasure of the Supreme Court.~~

1 Sec. 5. Section 29-2252, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-2252. The administrator shall:

4 (1) Supervise and administer the office;

5 (2) Establish and maintain policies, standards, and
6 procedures for the system;

7 ~~(3) , with the concurrence of the Supreme Court,~~

8 ~~(3) Prescribe and furnish such forms for records and~~
9 ~~reports for the system as shall be deemed necessary for uniformity,~~
10 ~~efficiency, and statistical accuracy,~~

11 ~~(4) Establish minimum qualifications for employment as a~~
12 ~~probation officer in this state and establish and maintain such~~
13 ~~additional qualifications as he or she deems appropriate for~~
14 ~~appointment to the system. Qualifications for probation officers~~
15 ~~shall be established in accordance with subsection (4) of section~~
16 ~~29-2253. An ex-offender released from a penal complex or a county~~
17 ~~jail may be appointed to a position of deputy probation or parole~~
18 ~~officer. Such ex-offender shall maintain a record free of arrests,~~
19 ~~except for minor traffic violations, for one year immediately~~
20 ~~preceding his or her appointment,~~

21 ~~(5) Establish and maintain advanced periodic inservice~~
22 ~~training requirements for the system,~~

23 ~~(6) Cooperate with the Board of Parole, the courts, and~~
24 ~~all other agencies, public or private, which are concerned with~~
25 ~~treatment or welfare of persons on probation;~~

26 ~~(7) Organize and conduct training programs for probation~~
27 ~~officers,~~

28 ~~(8) (4) Collect, develop, and maintain statistical~~

1 information concerning probationers, probation practices, and the
2 operation of the system; and

3 ~~(9) Interpret the probation program to the public with a~~
4 ~~view toward developing a broad base of public support;~~

5 ~~(10) Conduct research for the purpose of evaluating and~~
6 ~~improving the effectiveness of the system;~~

7 ~~(11) Adopt and promulgate such rules and regulations as~~
8 ~~may be necessary or proper for the operation of the office or~~
9 ~~system;~~

10 ~~(12) Transmit a report during each even-numbered year to~~
11 ~~the Supreme Court on the operation of the office for the preceding~~
12 ~~two calendar years, which report shall be transmitted by the~~
13 ~~Supreme Court to the Governor and the Clerk of the Legislature;~~

14 ~~(13) Administer the payment by the state of all salaries,~~
15 ~~travel, and actual and necessary expenses incident to the conduct~~
16 ~~and maintenance of the office; and~~

17 ~~(14) Exercise all powers and perform all duties necessary~~
18 ~~and proper to carry out his or her responsibilities.~~

19 ~~Each member of the Legislature shall receive a copy of~~
20 ~~the report required by subdivision (12) of this section by making a~~
21 ~~request for it to the administrator~~ (5) Provide the district judges
22 with any record of a probationer which they may require.

23 Sec. 6. Section 29-2253, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 29-2253. (1) The administrator, with the concurrence of
26 the ~~Supreme Court~~ director, shall divide the state into probation
27 districts and may from time to time alter the boundaries of such
28 districts in order to maintain the most economical, efficient, and

1 effective utilization of the system.

2 (2) The administrator shall appoint temporary and
3 permanent probation officers and employees for each probation
4 district as may be required to provide adequate probation services.

5 (3) The administrator shall appoint a chief probation
6 officer with the concurrence of the majority of all judges within a
7 probation district.

8 (4) The administrator shall, with the concurrence of all
9 of the separate juvenile court judges within each separate juvenile
10 court, ~~(a)~~ appoint for each separate juvenile court a chief
11 juvenile probation officer, any deputy juvenile probation officers
12 required, and such other employees as may be required to provide
13 adequate probation services for such court. ~~and (b) set the~~
14 ~~salaries of such officers and employees.~~ The chief and deputy
15 juvenile probation officers shall be selected with reference to
16 experience and understanding of problems of family life and child
17 welfare, juvenile delinquency, community organizations, and
18 training in the recognition and treatment of behavior disorders.

19 (5) The administrator may direct a probation officer of
20 one probation district to temporarily act as probation officer for
21 a court in another probation district, and such probation officer
22 while so serving shall have all the powers and responsibilities as
23 if he or she were serving in the probation district to which he or
24 she was originally appointed.

25 (6) The administrator, with the concurrence of the
26 ~~Supreme Court~~ director, shall designate the location of the
27 principal office of the system within each probation district.

28 Sec. 7. Section 29-2258, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-2258. A district probation officer shall:

3 (1) Make presentence and other investigations, as may be
4 required by law or directed by a court; ~~in which he or she is~~
5 ~~serving;~~

6 (2) Supervise probationers in accordance with the rules
7 and regulations of the office and the directions of the sentencing
8 court;

9 (3) Advise the sentencing court, in accordance with the
10 Nebraska Probation Administration Act and such rules and
11 regulations of the office, of violations of the conditions of
12 probation by individual probationers;

13 (4) Advise the sentencing court, in accordance with the
14 rules and regulations of the office and the direction of the court,
15 when the situation of a probationer may require a modification of
16 the conditions of probation or when a probationer's adjustment is
17 such as to warrant termination of probation;

18 (5) Provide each probationer with a statement of the
19 period and conditions of his or her probation;

20 (6) Whenever necessary, exercise the power of arrest as
21 provided in section 29-2266;

22 (7) Establish procedures for the direction and guidance
23 of deputy probation officers under his or her jurisdiction and
24 advise such officers in regard to the most effective performance of
25 their duties;

26 (8) Supervise and evaluate deputy probation officers
27 under his or her jurisdiction;

28 (9) Delegate such duties and responsibilities to a deputy

1 probation officer as he or she deems appropriate;

2 (10) Make such reports as required by the administrator,
3 ~~the judges of the probation district in which he or she serves, or~~
4 ~~the Supreme Court or the director;~~

5 (11) Keep accurate and complete accounts of all money or
6 property collected or received from probationers and give receipts
7 therefor;

8 (12) Cooperate fully with and render all reasonable
9 assistance to other probation officers;

10 (13) In counties with a population of less than
11 twenty-five thousand people, participate in pretrial diversion
12 programs established pursuant to section 29-3602 as requested by
13 judges of the probation district in which he or she serves, except
14 that participation in such programs shall not require appointment
15 of additional personnel and shall be consistent with the probation
16 officer's current caseload;

17 (14) Perform such other duties not inconsistent with the
18 Nebraska Probation Administration Act or the rules and regulations
19 of the office as a court may from time to time direct; and

20 (15) Exercise all powers and perform all duties necessary
21 and proper to carry out his or her responsibilities.

22 Sec. 8. Section 29-2259, Revised Statutes Supplement,
23 1999, is amended to read:

24 29-2259. (1) The salaries, actual and necessary
25 expenses, and expenses incident to the conduct and maintenance of
26 the office shall be paid by the state. Actual and necessary
27 expenses shall be paid as provided in sections 81-1174 to 81-1177.

28 (2) The salaries and actual and necessary travel expenses

1 of the probation service shall be paid by the state. Actual and
2 necessary expenses shall be paid as provided in sections 81-1174 to
3 81-1177.

4 (3) Except as provided in sections 29-2262 and
5 29-2262.04, the costs of drug testing and equipment incident to the
6 electronic surveillance of individuals on probation shall be paid
7 by the state.

8 (4) The expenses incident to the conduct and maintenance
9 of the principal office within each probation district shall in the
10 first instance be paid by the county in which it is located, but
11 such county shall be reimbursed for such expenses by all other
12 counties within the probation district to the extent and in the
13 proportions determined by the ~~Supreme Court~~ director based upon
14 population, number of investigations, and probation cases handled
15 or upon such other basis as the ~~Supreme Court~~ director deems fair
16 and equitable.

17 (5) Each county shall provide office space and necessary
18 facilities for probation officers performing their official duties
19 and shall bear the costs incident to maintenance of such offices
20 other than salaries, travel expenses, and data processing and word
21 processing hardware and software that is provided on the state
22 computer network.

23 (6) The cost of interpreter services for deaf and hard of
24 hearing persons and for persons unable to communicate the English
25 language shall be paid by the state with money appropriated to the
26 ~~Supreme Court~~ department. Interpreter services shall include
27 auxiliary aids for deaf and hard of hearing persons as defined in
28 section 20-151 and interpreters to assist persons unable to

1 communicate the English language as defined in section 25-2402.
2 Interpreter services shall be provided under this section for the
3 purposes of conducting a presentence investigation and for ongoing
4 supervision by a probation officer of such persons placed on
5 probation.

6 (7) The probation administrator shall prepare a budget
7 and request for appropriations for the office and shall submit such
8 request to the ~~Supreme Court and with its approval to the~~
9 ~~appropriate authority in accordance with law director.~~ The state
10 budget administrator shall create a separate budget program for
11 statewide adult probation and intensive supervision probation.

12 Sec. 9. Section 29-2261, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-2261. (1) Unless it is impractical to do so, when an
15 offender has been convicted of a felony, the court shall not impose
16 sentence without first ordering a presentence investigation of the
17 offender and according due consideration to a written report of
18 such investigation.

19 (2) A court may order a presentence investigation in any
20 case.

21 (3) The presentence investigation and report shall
22 include, when available, an analysis of the circumstances attending
23 the commission of the crime, the offender's history of delinquency
24 or criminality, physical and mental condition, family situation and
25 background, economic status, education, occupation and personal
26 habits, and any other matters that the probation officer deems
27 relevant or the court directs to be included. All local and state
28 police agencies and adult and correctional institutions shall

1 furnish to the probation officer copies of such criminal records,
2 in any such case referred to the probation officer by the court of
3 proper jurisdiction, as the probation officer shall require without
4 cost to the court or the probation officer.

5 Such investigation shall also include:

6 (a) Any written statements submitted to the county
7 attorney by a victim; and

8 (b) Any written statements submitted to the probation
9 officer by a victim.

10 (4) If there are no written statements submitted to the
11 probation officer, he or she shall certify to the court that:

12 (a) He or she has attempted to contact the victim; and

13 (b) If he or she has contacted the victim, such officer
14 offered to accept the written statements of the victim or to reduce
15 such victim's oral statements to writing.

16 For purposes of subsections (3) and (4) of this section,
17 the term victim shall be as defined in section 29-119.

18 (5) Before imposing sentence, the court may order the
19 offender to submit to psychiatric observation and examination for a
20 period of not exceeding sixty days or such longer period as the
21 court determines to be necessary for that purpose. The offender
22 may be remanded for this purpose to any available clinic or mental
23 hospital, or the court may appoint a qualified psychiatrist to make
24 the examination. The report of the examination shall be submitted
25 to the court.

26 (6) Any presentence report or psychiatric examination
27 shall be privileged and shall not be disclosed directly or
28 indirectly to anyone other than a judge, probation officers to whom

1 an offender's file is duly transferred, or others entitled by law
2 to receive such information. The court may permit inspection of
3 the report or examination of parts thereof by the offender or his
4 or her attorney, or other person having a proper interest therein,
5 whenever the court finds it is in the best interest of a particular
6 offender. The court may allow fair opportunity for an offender to
7 provide additional information for the court's consideration.

8 (7) If an offender is sentenced to imprisonment, a copy
9 of the report of any presentence investigation or psychiatric
10 examination shall be transmitted forthwith to the Department of
11 Correctional Services, Division of Adult Services, or, when the
12 defendant is committed to the custody of a specific institution, to
13 such institution.

14 Sec. 10. Section 29-2262.03, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 29-2262.03. (1) Whenever the court considers the
17 sentence for an offender convicted of any crime for which a term of
18 imprisonment of six months or more is possible and mandatory
19 minimum imprisonment is not specifically required, the court may
20 withhold the sentence of imprisonment and sentence the offender to
21 intensive supervision probation. The decision whether to sentence
22 an offender to intensive supervision probation shall be guided by
23 the criteria for withholding a sentence of imprisonment as set
24 forth in subsection (2) of this section and subsections (2) and (3)
25 of section 29-2260.

26 (2) Intensive supervision probation shall be governed by
27 the laws governing probation except as required by specific
28 provisions of this section and sections 29-2252.01, 29-2262.02, and

1 ~~29-2262.04. 7 and 29-2262.05.~~

2 Sec. 11. Section 29-2269, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 29-2269. Sections 29-2246 to ~~29-2268~~ 29-2269 and
5 sections 1 and 2 of this act shall be known and may be cited as the
6 Nebraska Probation Administration Act.

7 Sec. 12. Original sections 29-2246, 29-2251, 29-2252,
8 29-2253, 29-2258, 29-2261, 29-2262.03, and 29-2269, Reissue Revised
9 Statutes of Nebraska, and section 29-2259, Revised Statutes
10 Supplement, 1999, are repealed.

11 Sec. 13. The following sections are outright repealed:
12 Sections 29-2249, 29-2249.04, 29-2250, and 29-2262.05, Reissue
13 Revised Statutes of Nebraska.